

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941-BB

RIO CHAMA STREAM SYSTEM

Section 3, Rio Nutrias

**ORDER GRANTING MOTION TO ESTABLISH PROCEDURES
FOR ENTRY OF PARTIAL FINAL JUDGMENT AND DECREE
ON SURFACE WATER IRRIGATION RIGHTS IN RIO NUTRIAS SUBSECTION,
SECTION 3, RIO CHAMA STREAM SYSTEM**

THIS MATTER comes before the Court on the State of New Mexico, *ex rel.* State Engineer's *Motion to Establish Procedures for Entry of Partial Final Judgment and Decree on Surface Water Irrigation Rights in the Rio Nutrias Subsection of Section 3 of the Rio Chama Stream System* (Doc. No. 10172, filed June 27, 2011). The Court, having reviewed the Motion, pertinent portions of the record and the law, and being otherwise fully advised in the premises, finds the Motion to be well-taken, and that it should be GRANTED. Further, the Court enters this Order pursuant to Fed. R. Civ. P. 16(b) to guide the course of the determination of water rights in the Rio Nutrias Subsection of Section 3 of the Rio Chama Stream System ("Nutrias Subsection").

1. The State of New Mexico ("State") shall prepare a Proposed Partial Final Judgment and Decree on Surface Water Irrigation Rights in the Rio Nutrias Subsection of Section 3 of the Rio Chama Stream System ("Proposed Decree") with an Addendum that summarizes the water rights

adjudicated and decreed therein. The Proposed Decree, if approved by the Court after opportunity for *inter se* objections and hearings thereon, will represent the final adjudication of all claims for surface water irrigation rights in the Nutrias Subsection and bind all claimants of water rights of any type in the Nutrias Subsection – subject to the rights of parties who are not included within the Nutrias Subsection to object to the Decree, or to contest any individual water right described in the Decree, in any further *inter se* proceedings ordered by the Court for the Rio Chama or Rio Grande Stream Systems generally.

2. The State shall prepare a Notice of Partial Final Judgment and Decree on Surface Water Irrigation Rights in the Rio Nutrias Subsection Section 3 of the Rio Chama Stream System (“Notice”) to be served on defendants in the Nutrias Subsection, including the United States and community ditches in the Nutrias Subsection. The Notice shall be mailed to the last known address of individual subfile defendants as they are listed in the Court’s records. The State shall not be required to make a determination of current ownership of tracts, nor mail notices to any person not a party to these proceedings. A successor-in-interest to an individual subfile defendant may request substitution of parties under Fed. R. Civ. P. 25(c) in order to participate in the proceedings. The State shall file an appropriate Certificate of Service with the Court following the mailing of the Notice to defendants in the Nutrias Subsection.

3. The State shall prepare a Notice for publication to inform all known and unknown claimants of water rights in the Nutrias Subsection of their right to participate and offer evidence in support of *inter se* objections to the Proposed Decree, and that this *inter se* proceeding will be their only opportunity to file objections to the determination of surface water irrigation rights described in the Proposed Decree. The Notice for publication shall be published once each week for four

consecutive weeks in the Rio Grande Sun, which is a newspaper of general circulation in the Nutrias Subsection and the Rio Chama Stream System generally. The State shall file an appropriate Proof of Publication with the Court following publication of the Notice.

4. Copies of the Proposed Decree and Addendum, and hydrographic survey maps showing the location of all tracts described in the decree, shall be made available for public inspection at the Office of the Rio Arriba County Clerk in Tierra Amarilla and in Española, at the Federal District Court in Santa Fe and in Albuquerque, and at the Utton Center at the UNM School of Law. Copies shall also be available for inspection at the Water Resource Allocation Program (WRAP) of the Office of the State Engineer in Santa Fe. The Proposed Decree (without the Addendum) shall be posted on the Office of the State Engineer's website.

5. The Notice of Proposed Partial Final Judgment and Decree on Surface Water Rights and the Notice for publication shall inform claimants that all *inter se* objections to the Proposed Decree must be filed with the Court, in person or by mail for receipt no later than **December 15, 2012**. Claimants in the Nutrias Subsection, known and unknown, shall be notified that this will be their only opportunity to make *inter se* objections to the determination of surface water irrigation rights described in the Proposed Decree. Blank forms that may be used for filing *inter se* objections shall be available to the public with the Proposed Decree at the locations described in paragraph 4 above. The form shall also be included with the Notice of Proposed Final Judgment and Decree to be mailed to defendants in the Nutrias Subsection.

6. If *inter se* objections are timely filed, the State shall prepare a report that summarizes all objections and make the report available for public inspection at the locations described in paragraph 4 above by **February 1, 2012**. The State shall mail a copy of the *inter se* objections to

those persons whose water rights are the subject of those objections, by certified mail, return receipt requested, and file an appropriate Certificate of Service with the Court. Persons who file timely *inter se* objections, and the affected subfile parties/defendants, shall be required to attend the scheduling and pretrial conference with the Court in Santa Fe. Further procedures for hearing objections to the Proposed Decree shall be determined at the conference.

7. Whether or not they have filed an objection, all persons having water rights in the Nutrias Subsection may participate in the proceedings to resolve *inter se* objections. **All persons having water rights in the Nutrias Subsection will be bound by the outcome of the proceedings to resolve *inter se* objections.** Persons that elect to participate in the proceedings to resolve *inter se* objections shall file a notice of intent to participate with the Court no later than **March 15, 2012**. Blank forms that may be used for this purpose shall be available to the public with the report that summarizes *inter se* objections. Persons that elect to participate in the proceedings to resolve *inter se* objections shall also be required to attend the scheduling and pretrial conference with the Court in Santa Fe.

8. The Court approves the proposed Notice to be served on defendants in the Nutrias Subsection, the proposed Notice for publication, the proposed *Inter Se* Objection Form, and the proposed Notice of Intent to Participate in *Inter Se* Proceedings attached to the State's June 27, 2011, Motion as Exhibits 4, 5 and 6, and as attached to the State's Notice of Errata, filed June 27, 2011 (No. 10173).

IT SO ORDERED.



BRUCE D. BLACK
UNITED STATES DISTRICT JUDGE

Recommended for approval:

Vickie L. Gabin

SPECIAL MASTER VICKIE L. GABIN